



April 3, 2003

Mr. Charles Whitmore, Acting Director
USDA Natural Resources Conservation Service
Conservation Operations Division
PO Box 2890
Washington, DC 20013-2890

Re: Conservation Security Program (CSP) Advance Notice of Proposed Rulemaking and Request for Comments

Dear Mr. Whitmore:

The National Association of State Departments of Agriculture (NASDA) appreciates the opportunity to comment on the Advance Notice of Proposed Rulemaking for the Conservation Security Program (CSP) which is authorized in the Farm Security and Rural Investment Act of 2002.

NASDA represents the commissioners, secretaries, directors of the state departments of agriculture in the fifty states and four territories. Our members have been strong proponents of a voluntary, incentive-based approach for soil and water conservation programs. The CSP accomplishes these goals in terms of being voluntary and incentive based. NASDA strongly supports CSP because of its significant potential to help producers address unmet conservation needs on working lands. We like CSP's "win-win" approach of providing the public with conservation benefits while offering financial rewards and incentives to producers for voluntary conservation work on private farm and ranch lands.

CSP - General Program Implementation

While the statutory language in the 2002 Farm Bill may limit some options, NASDA believes it is extremely important to simplify the application process and administration of the CSP as much as possible. USDA-NRCS should avoid a complicated, lengthy set of rules and procedures because it could be a bureaucratic nightmare to potential applicants and agency personnel.

NASDA strongly believes the CSP should be implemented, administered, and operated through state partnerships to the maximum extent possible. During debate on the 2002 Farm Bill, NASDA urged the creation of a new Agricultural Stewardship Program. This "block grant" type initiative would give state and local governments greater flexibility, innovative tools, and resources to implement agricultural conservation priorities. Under our proposal, a state could cooperate with NRCS to operate the program, through a "memorandum of understanding" (MOU) or other delegated authority. The delivery method would be through block grants. A state department of agriculture or state conservation agency could choose to operate the program or collaborate with other state and local agencies in providing this responsibility. In designing and implementing the CSP, NASDA urges NRCS to use state and local partnerships and cooperative agreements to achieve its goals.

State departments of agriculture believe the CSP should be implemented on a nationwide basis and made available to all producers as soon as possible. All types of agriculture should be able to participate. To the maximum extent possible, CSP design, management and standards should take into account the views of the State Advisory Committees' on how USDA programs could better address environmental concerns. These recommendations were outlined in a recent General



Accounting Office (GAO) report #02-295. The GAO report emphasized that USDA conservation programs could be improved by: (1) increased flexibility; (2) enabling producers to better adapt to the diverse situations faced by landowners; (3) encouraging a broad range of conservation practices; and (4) providing additional technical assistance to support producers in planning and implementing conservation practices. The report stated that eighty percent of committee members believed that programs should emphasize local conservation needs. Seventy percent of committee members said that providing eligibility to all types of operations is an important program design.

Following are NASDA's comments and recommendations in response to the specific fifteen questions outlined in the ANPRM:

1. What criteria should be used to determine what is a resource concern and whether a resource concern is significant?

We believe resource concerns should be defined as broadly as possible at the national level. Possible examples of national resource concerns are: soil erosion by water or wind, degradation of surface or ground water quality, adequate water supplies, diminished soil quality, diminished air quality by particulate matter or odor, loss wildlife habitat and loss of desirable and endangered plant or animal species.. Since natural resource conditions vary significantly from one area to another, determinations of whether resource concerns are significant should be made at the state and local level. Conservation programs should be connected to resource concerns.

2. What should be the minimum requirements for each of the three tiers of conservation efforts? Should NRCS establish minimum requirements that apply to all contracts nationally? What could some of these requirements be?

The statute specifies minimum requirements for each of the three tiers. The state and local work groups should make recommendations on what further minimum requirements are appropriate in each location based on the local resource conditions and needs.

3. What criteria should be used to determine which practices and activities are eligible for payment under the program? Should specific practices or activities receive priority for payment under the program?

State and local work groups should determine the priority for payment for sets of practices and activities with the most critical resources concerns receiving priority.

4. What should be the balance of the base payment, maintenance cost-share payment and enhancement payment to reward the steward and attain additional conservation benefits? The law restricts the maximum base payment to a percentage of the total contract cap (i.e. 25 percent for Tier I and 30 percent for Tiers II and III).

The balance should be up to the maximum allowed under the law reserving 5-20% of the payment caps for enhanced payments.

5. How should "agricultural operation" be defined?

We believe NRCS should start with the definition(s) used by USDA in other conservation and commodity programs and strive for consistency, or be able to defend the difference.

- 6. The law specifies the eligible land for payment purposes as cropland, grassland, prairie land, and rangeland as well as forestland that is an incidental part of the agricultural operation. Should noncropped areas, such as turn rows or riparian areas, that are part of the agriculture operation be included for conservation treatment? Should farmsteads, ranch sites, barnyards, feedlots, equipment storage, material-handling facilities, and other such developed areas be considered part of the “agricultural operation”? What criteria should be used to determine those areas of a farm or ranch that might legitimately be excluded from the “agricultural operation”?**

The law clearly states what is eligible land: “private agricultural land (including cropland, grassland, prairie land, improved pasture land, and rangeland), land under the jurisdiction of an Indian tribe (as defined by the Secretary), and forested land that is an incidental part of an agricultural operation shall be eligible for enrollment in the conservation security program.” Let the need drive the interpretation.

- 7. The law specifies that NRCS make a base payment as part of a conservation security plan using either the 2001 national rental rate for a specific land use or another appropriate rate that assures regional equity. How should NRCS determine the base payment? If an alternative to the national rental rate is used, how should it be constructed? Should the payments be determined at the national, state or local levels?**

NASDA believes rental rates or a percentage of market value adjusted to the state and local areas would be fair methods to determine base payments.

- 8. The law provides for an enhanced payment if an owner or operator does one or more of the following: (a) Implements or maintains practices that exceed minimum requirements; (b) addresses local conservation priorities; (c) participates in on-farm research, demonstration, or pilot projects; (d) participates in a watershed or regional resource conservation plan; or (e) carries out assessment and evaluation activities relating to practices included in a conservation security plan. Enhanced payments are meant to ensure and optimize environmental benefits. How should enhanced payments be determined and calculated?**

Enhanced payments should be determined at the state and local level. The enhanced payments can be made on a percentage (bonus) or flat rate (e.g. \$500 per year) basis.

- 9. The law does not limit the number of contracts held by a producer. Should there be a limitation on the total number of contracts a producer may have? If there is no limit on the number of contracts, should USDA set an individual payment limitation for producers with multiple contracts?**

NRCS should strive for consistency with other USDA conservation and commodity programs. The caps in the statute seem to imply one contract per producer. Current law already provides for maximum payment limitations.

- 10. The law requires that the regulations provide for adequate safeguards to protect the interests of tenants and sharecroppers, including provisions for sharing payments, on a fair and equitable basis. Concerns have been raised over the impact of CSP provisions on owner/operator relationships including changes in rental rates or changes in operators. How can NRCS ensure that payments are shared on a fair and equitable basis?**

NRCS should strive for consistency with other USDA conservation and commodity programs, or be able to explain the disparity. Generally, we believe this issue should be resolved between owners and tenants individually, not by NRCS.

11. **The law requires a minimum contract length in CSP of five years. Many landlord-tenant relationships are short-term in nature, usually less than five years. Should the applicant be required to have control of the land for the complete CSP contract period? How should the program address the tension between the return to management versus the return to capital?**

Flexibility in the program is needed to accommodate short term landlord-tenant relationships. Consistency, or having a defensible reason for being different from other USDA conservation and commodity programs is important.

12. **The law does not prescribe a funding or acreage cap for CSP. USDA estimates that there is a potential applicant pool of over two million farms and ranches covering over 900 million potential eligible acres. A primary implementation concern is the program scope. In order for this program to accomplish the Administration's goal of maximizing the conservation and improvement of natural resources, it is necessary to prioritize CSP assistance. The Department is seeking public comments on ways to focus and prioritize CSP assistance. For example, if the program would only fund the highest-priority applications, should there be an open application process with all applicants competing for a limited number of contracts? Should applications be constrained by resource concern, program funding, tier level, owner-operator relationship, geography or other constraint?**

We believe USDA should allocate the available funding out to the states utilizing a transparent formula and give the states flexibility to use the CSP funds for the best and highest purposes. as they see fit.

13. **The law includes energy as a resource concern for CSP program purposes. The NRCS Field Office Technical Guide does not recognize energy as a natural resource concern and therefore no quality criteria or non-degradation standard exists to compare a conservation treatment against. NRCS is seeking comments on how energy use should be incorporated into the program requirements. How should the benefits be assessed?**

Energy conservation measures are included in the statute as possible practices that may be implemented by producers. Appropriate standards and specifications for energy conservation practices should be maintained in the NRCS Field Office Technical Guide (FOTG).

14. **The law includes payment for conservation practices described as requiring planning, implementation, management and maintenance. A concern was raised as to whether the payment would be, in fact, a return for equity in capital or for the engagement in intensive management. What should the program be paying for?**

Both should be considered for payments.

15. **The law provides little guidance for monitoring quality assurance or specifics on identifying contract violations. The issue is two-fold in nature encompassing both the measurement of outcomes from a performance standpoint and assuring the Federal funds are spent wisely and that contracts are appropriately carried out. How should USDA ensure accountability?**

Allowing for annual "producer certification" with a "spot checking" process would reduce agency oversight workload. Also, utilizing USDA's Farm Service Agency (FSA) "field and tract" system would be useful in tracking and payment scenarios. In the end, the real "performance measures" will be the actual conservation on the land and how it is perceived by the producers and communities.

NASDA appreciates the opportunity to provide these comments. We believe that implementation of a sound CSP based on state and local priorities and partnerships will result in improved environmental benefits while improving the economic health of farmers and ranchers. NASDA stands ready to continue to work with USDA-NRCS as CSP program rules are designed and developed.

Sincerely yours,

Richard W. Kirchhoff
Executive Vice President & CEO